

DATE: June 3, 2002

TO: Beata Kalies

Committee on Agriculture

FROM: Patrick Fuller, Assembly Assistant Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 01-076

AN ORDER to repeal ATCP 21.11; and to amend ATCP 21.01 (2) and (15) and 29.56 (1) (e) 4., relating to plant inspection and pest control.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **May 24, 2002.**

To committee on **Agriculture.**

Referred on **Monday, June 3, 2002.**

Last day for action - **Wednesday, July 3, 2002.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. **(Please note that the text of Clearinghouse Rules beginning with the prefix "01" is now available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee
MEMO

TO: Members of the Assembly Agriculture Committee
FROM: Representative Al Ott, Chair *AO*
DATE: June 4, 2002

The following clearinghouse rule has been referred to the Assembly Agriculture Committee for a thirty-day review period:

Clearinghouse Rule 01-076

An ORDER to repeal ATCP 21.11; and to amend ATCP 21.01(2) and (15) and 29.56 (1)(e) 4; relating to plant inspection and pest control.

Submitted by the Department of Agriculture, Trade and Consumer Protection.

The deadline for action on this rule is Wednesday, July 3, 2002. A brief summary of the rule is enclosed. Please contact Beata Kalies in my office (6-5831) if you would like a copy of the entire rule or have additional questions. Text of this rule is also available online in FOLIO, the Clearinghouse Rules infobase. Thank you.



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: **01-076**

SUBJECT: **Plant Inspection and Pest Control**

ADM. CODE REFERENCE: **ATCP 21**

DATCP DOCKET #: **00-R-17**

Dated this 14 day of May, 2002.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By James E. Harsdorf
James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

DATE: May 6, 2002

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM: ✓ James E. Harsdorf, Secretary *James E. Harsdorf*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Plant Inspection and Pest Control; Final Draft Rule
(Clearinghouse Rule #01-076)**

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

This rule affects plant inspection and pest control programs in Wisconsin. This rule repeals current import controls on Japanese beetle, and updates scientific terminology and statutory references.

Japanese Beetle; Repeal of Import Controls

The Department of Agriculture, Trade and Consumer Protection administers plant pest control rules under ch. ATCP 21, Wis. Adm. Code. Current rules include import controls designed to prevent the spread of Japanese beetles into Wisconsin. Persons who import certain plants, soil and other materials from areas infested with Japanese beetle must have those materials inspected and certified by a pest control official in the state or province of origin. The inspector must certify that the import shipment is free of Japanese beetle. The importer must pay for the inspection and certification.

Despite these import controls, the Japanese beetle has now infested Wisconsin and over half of all U.S. states. Because Wisconsin is now infested, its current import controls may serve no useful purpose and may unnecessarily impede interstate commerce. Wisconsin's current import restrictions are not consistent with the U.S. Domestic Japanese Beetle Harmonization Plan adopted by the National Plant Board. That plan recommends regulation of imports to states that are not yet infested, but does *not* recommend regulation of imports to states (like Wisconsin) that are already infested.

Consistent with the national harmonization plan, this rule repeals current Japanese beetle inspection and certification requirements for materials imported into Wisconsin. This repeal will not affect the natural spread of the Japanese beetle in Wisconsin. The department will continue to inspect and certify export shipments from Wisconsin to non-infested states that require such inspection and certification.

Taxonomic Name Changes

The department currently regulates honeybee shipments, under ch. ATCP 21, Wis. Adm. Code, to prevent the spread of honeybee pests in this state. Two of these pests have undergone taxonomic name changes. The International Committee on Systematic Bacteriology (1993) has changed the scientific name of the pathogen, American foulbrood. The scientific journal, *Experimental and Applied Acarology* (2000), has changed the scientific name of the Varroa mite. This rule updates those pest names. The name changes will not change the regulation of honeybee shipments.

State Pest Control Programs

Current DATCP rules under ch. ATCP 29, Wis. Adm. Code, regulate the use of pesticides in this state. The department and its agents are currently exempt from these rules when engaged in state pest control programs under s. 94.02, Stats., or ch. ATCP 21, Wis. Adm. Code. This rule clarifies that the department and its agents are also exempt when engaged in state pest control programs under s. 94.01, Stats.

Hearings

The department held one public hearing on this rule in Madison, on August 21, 2001. No one attended the hearing or sent written comments.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse commented that the department should repeal the definition of Japanese beetle as the term is only used in ATCP 21.11, which is being repealed. The department modified the final draft rule to address this comment.

Fiscal Estimate

The department does not expect this rule to have any fiscal impact on the department or other units of government. A fiscal estimate is attached.

Small Business Analysis

The department does not expect this rule to have a significant impact on small businesses in Wisconsin. Under current rules, out-of-state businesses shipping into Wisconsin have incurred costs for Japanese Beetle inspection and certification. This rule eliminates those costs. To the extent that out-of-state importers passed on the costs to nurseries receiving import shipments in Wisconsin, this rule will decrease costs to Wisconsin nurseries.

Clearinghouse Rule 01-076
DATCP Docket No. 00-R-17

PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION AMENDING RULES

- 1 The state of Wisconsin department of agriculture, trade and consumer protection
2 proposes an order to repeal ATCP 21.01(9) and 21.11; and to amend ATCP 21.01(2) and
3 (15) and 29.56(1)(e)4; relating to plant inspection and pest control.
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**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

Statutory Authority: ss. 93.07(1) and (12), 94.01(1) and 94.76(1), Stats.

Statutes Interpreted: ss. 93.07(12) and (13), 94.01, and 94.76, Stats.

This rule repeals current import controls designed to prevent the spread of Japanese beetles into this state. Despite the current import controls, Wisconsin is now infested with Japanese beetle. The current import controls therefore serve no purpose, and may unnecessarily impede interstate commerce. This rule also updates scientific terminology and statutory references in current rules.

Japanese Beetle: Repeal of Import Controls

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers plant pest control rules, under ch. ATCP 21, Wis. Adm. Code. Current rules include import controls designed to prevent the spread of Japanese beetles into Wisconsin. Persons who import certain plants, soil and other materials from areas infested with Japanese beetle must have those materials inspected and certified by a pest control official in the state or province of origin. The inspector must certify that the import shipment is free of Japanese beetle. The importer must pay for the inspection and certification.

Despite these import controls, the Japanese beetle has now infested Wisconsin and over half of all U.S. states. Because Wisconsin is now infested, its current import controls may serve no useful purpose and may unnecessarily impede interstate commerce. Wisconsin's

current import restrictions are not consistent with the U.S. Domestic Japanese Beetle Harmonization Plan adopted by the National Plant Board. That plan recommends regulation of imports to states that are not yet infested, but does *not* recommend regulation of imports to states (like Wisconsin) that are already infested.

Consistent with the national harmonization plan, this rule repeals current Japanese beetle inspection and certification requirements for materials imported into Wisconsin. This repeal will not affect the natural spread of the Japanese beetle in Wisconsin. DATCP will continue to inspect and certify export shipments from Wisconsin to non-infested states that require such inspection and certification.

Taxonomic Name Changes

DATCP currently regulates honeybee shipments, under ch. ATCP 21, Wis. Adm. Code, to prevent the spread of honeybee pests in this state. Two of these pests have undergone taxonomic name changes. The International Committee on Systematic Bacteriology (1993) has changed the scientific name of the pathogen, American foulbrood. The scientific journal, *Experimental and Applied Acarology* (2000), has changed the scientific name of the Varroa mite. This rule updates those pest names. The name changes will not change the regulation of honeybee shipments.

State Pest Control Programs

Current DATCP rules under ch. ATCP 29, Wis. Adm. Code, regulate the use of pesticides in this state. DATCP and its agents are currently exempt from these rules when engaged in state pest control programs under s. 94.02, Stats., or ch. ATCP 21, Wis. Adm. Code. This rule clarifies that DATCP and its agents are also exempt when engaged in state pest control programs under s. 94.01, Stats.

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- 1 **SECTION 1.** ATCP 21.01 (2) and (15) are amended to read:
 - 2 ATCP 21.01 (2)“American foulbrood” means ~~Bacillus~~ *Paenibacillus* larvae and
 - 3 related pathogens.
 - 4 (15) “Varroa mite” means ~~Varroa jacobsoni~~ *Varroa destructor*
 - 5 **SECTION 2.** ATCP 21.01 (9) is repealed.
 - 6 **SECTION 3.** ATCP 21.11 is repealed.
 - 7 **SECTION 4.** ATCP 29.56 (1)(e) 4 is amended to read:
 - 8 ATCP 29.56 (1)(e) 4. Pesticide applications made by the department or its agent

9 pursuant to s. 94.01 or 94.02, Stats., or ch. ATCP 21.

1 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first
2 day of the month following publication in the Wisconsin administrative register, as
3 provided under s. 227.22(2) (intro), Stats.

4 Dated this _____ day of _____, 2002.

State of Wisconsin
Department of Agriculture
Trade and Consumer Protection

By _____
James E. Harsdorf, Secretary

FISCAL ESTIMATE

A-2048 N(R 10/98)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
ATCP 21, Wis. Adm. Rule

Amendment No. (If Applicable)

Subject
Chapter ATCP 21, Wis. Adm. Code – Plant Inspection and Pest Control

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Increase Existing Revenues
- Decrease Existing Appropriation
- Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:

Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Source Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

These rule changes eliminate the current Japanese beetle import restrictions. Wisconsin has become infested despite the import restrictions. Therefore, the rule no longer serves a useful purpose. The department currently inspects and certifies Wisconsin nurseries in infested areas, to facilitate export of items that may transport Japanese beetle. This practice of certification to permit Wisconsin nurseries to export to uninfested states will continue. There are no additional costs to local government.

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.)
 DATCP/Melody Walker 224-4595

Authorized Signature/Telephone No.
Barbara Knapp
 Barbara Knapp (608) 224-4746

Date
 03/20/01

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Plant Inspection and Pest Control
Adm. Code Reference: ATCP 21
Rules Clearinghouse #: 01-076
DATCP Docket #: 00-R-17

Rule Description

The proposed revisions modify ch. ATCP 21 and s. 29.56, Wis. Adm. Codes with the statutory authorization from ss. 93.07(1) and (12), and 94.01(1), Stats. The major focus of the rule revision concerns the elimination of the Japanese beetle import restrictions. Minor changes include the update of scientific names of honeybee pests and insertion of a previously omitted statutory reference.

Removal of the Japanese beetle import restrictions allows for unrestricted movement of plants, soil and other materials that may harbor Japanese beetles. Japanese beetles have infested Wisconsin despite the import regulations. The continued regulation of imported items will not deter the natural spread of Japanese beetle in Wisconsin. Furthermore, continued import restrictions may serve no purpose other than to encumber interstate commerce.

Small Businesses Affected by this Rule

A "small business," as defined in s. 227.114(1)(a), Stats., means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than twenty-five full time employees or which has gross annual sales of less than \$2,500,000. Many nursery growers are classified as small businesses. They import and export plants, soil and other materials that may transport Japanese beetles. The current rule places the expense of inspection and certification on out-of-state small businesses. The removal of this rule will reduce the cost to these small businesses.

Effects on Small Business

Repeal of this rule will not incite federal quarantine, but rather, will allow for compliance with the U. S. Harmonization Plan on Japanese Beetle Regulations, published by the National Plant Board. The plan suggests uniform state regulatory standards for Japanese beetle, and considers regulation of shipments from infested to non-infested states. Wisconsin is already listed in the U. S. Harmonization Plan as infested. Therefore, certification recommendations in the plan apply to Wisconsin nurseries.

Under the plan, certification protocol allows for a variety of approved treatments that control Japanese beetle and growing practices that exclude Japanese beetle. The National Plant Board developed this plan in cooperation with the regulated industry. The goals are to reasonably mitigate pest risk to an acceptable level for the effective interstate movement of nursery stock.

The repeal of the current rule is in agreement with the U.S. Harmonization Plan, and allows for the uninhibited movement of regulated items into Wisconsin. The removal of the import restrictions may impact Wisconsin small businesses by expanding available sources of currently restricted items. In addition, it will reduce the expense of small businesses that import plants, soil and other materials from infested states into Wisconsin.

DATCP already inspects and certifies Wisconsin nurseries for export of regulated items, because Wisconsin is infested with Japanese beetles. Therefore, DATCP will continue to provide export certification services to persons who wish to export regulated materials from Wisconsin to non-infested states. These rule changes will reduce the cost to nurseries in infested state importing into Wisconsin, and increase available sources of nursery stock, soil and other materials to Wisconsin nurseries.

Dated this 11th day of October, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE &
CONSUMER PROTECTION

By Nicholas J. Neher
Nicholas J. Neher, Administrator
Division of Agricultural Resource Management